

**Office of Massachusetts Attorney General  
Martha Coakley**



**Local Consumer Aid Fund Program  
Standards and Responsibilities**

***For Face to Face Mediation  
and  
Local Consumer Programs***

Fiscal Year 2013

**Pages 2-5 contain standards and responsibilities applicable to all programs.**

**Statutory Requirements:**

1. Use of Funds: The Local Consumer Aid Fund ("LCAF") grant funds shall only be used for expenses involved with the intake, resolution, administration of consumer complaints and outreach concerning consumer topics.
2. Each Program<sup>1</sup> (Local Consumer and Face-to-Face Mediation) will provide the level of service to the designated geographic area as specified in the Notice of Grant Award.
3. Pursuant to [M.G.L. c. 12, §8\(F\)\(J\)](#), all charitable organizations, except those organized exclusively for religious purposes, must register, file annual financial reports, and be in good standing with the Non-Profit Organization/Public Charities Division of the Attorney General's Office (AGO). All organizations which are eligible for tax exempt status under [26 U.S.C. §501\(c\)\(3\)](#) are charitable organizations and must file such reports. Failure to do so will result in the loss of funds.
4. Unemployment Insurance The AGO requests that LCAF grant recipients choose the "contributory" rather than the "payments in lieu of contributions" method of financing unemployment benefits as allowed under the Employment Security Law ([151A, §14A](#)). LCAF grant monies may be used for the quarterly contributions to the unemployment insurance fund. However, under no circumstances can LCAF grant monies be used to pay unemployment benefits.

**Relationship to the AGO:**

1. At any time reference is made to the Program's affiliation with the AGO (in writing or verbally,) use the statement "working in cooperation with the Office of the Massachusetts Attorney General."
2. The Program agrees to identify the AGO as a funding source for the consumer mediation program in any brochures, annual reports, or other related materials.
3. The primary point of contact for the Program in the AGO is Aaron Kravitz, Manager of Web and Publications in the External Affairs Division, (617) 963-2096 or [aaron.kravitz@state.ma.us](mailto:aaron.kravitz@state.ma.us).

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<sup>1</sup> For the purpose of these Standards and Responsibilities, the term "Program" shall mean both Local Consumer Programs and Face-to-Face Mediation Programs unless designated otherwise.

### **Minimum Standards of Performance**

1. Each Program is responsible for providing a minimum of 30 hours per week of operations. Operations may include but are not limited to: mediations both in court and/or in office and outreach events. Additionally, each Program must have an answering machine or voicemail system to receive calls outside of hours of business. When a call cannot be answered during business hours, calls must be routed to an answering machine or voicemail system.
2. Notice of office closings must be given to the Aaron Kravitz, Manager of Web and Publications, at [aaron.kravitz@state.ma.us](mailto:aaron.kravitz@state.ma.us) or (617) 963-2096. Unless the closing is unanticipated, notice should be submitted at least three business days in advance. In the event of an office closing, the office's voicemail must indicate that the office is closed, when the office will reopen, and a number for immediate assistance.
3. No Program may close for more than two consecutive business days without advance written notice to and response from the AGO.
4. At least one staff member from the Program must attend the regularly scheduled in-person or telephone conference calls scheduled by the AGO.
5. Each Program agrees to accept for its service area mediation referrals forwarded from the AGO and complaints filed directly with its office regardless of the location of the parties. These complaints should be mediated or referred to another agency as appropriate with consideration being given to the consumer's request regarding the geographic location.

### **Education and Outreach:**

1. Programs are encouraged to participate in education, training, and outreach activities in their communities with the funds they receive from the LCAF.
2. In their outreach or education efforts, Programs may only discuss mediation or dispute resolution issues or techniques in general. Under no circumstances are the Program staff members to discuss specific companies, consumers, or mediations.

### **Press Inquiries**

1. All inquiries from the press related to information concerning consumer complaints and/or practices of a business must be referred to the press office of the AGO. The press staff may direct the media to the Programs as appropriate, but will first notify the Program director and will discuss the nature of the request and the type of information he/she is at liberty to discuss.
  - a. Program Directors may not talk to the media about complaint-related information until they have received clearance from the AGO press office or other Attorney General staff. The AGO's Press Office can be reached at 617-727-2543.
  - b. Upon approval from the AGO's Press Office, the Program may discuss generally

with the press the type of service it provides and the kinds of complaints the program typically handles.

- c. In any press contact, the Program should mention that it is a recipient of funds disbursed by the AGO and that it works in cooperation with the AGO.

**Reporting Requirements:**

1. For Program Specific Reporting Requirements, please review the program's information.

*On a Quarterly Basis*

1. All quarterly reports must be submitted electronically to [aaron.kravitz@state.ma.us](mailto:aaron.kravitz@state.ma.us).
2. Programs must submit the financial and program reporting forms by: October 12th, 2012, January 11th, 2013, April 12th, 2013 and July 12th, 2013.
3. Documentation (such as vouchers, pay stubs, receipts or copies of receipts) does not need to be attached to the financial reporting form, but must be made available to the AGO upon request. Failure to provide such documentation may result in the loss of the remaining funds, and remittance of funds that cannot be appropriately documented.

As a condition of grant award, each Program agrees that representatives of the AGO may at any time review the books and records of the Program to ensure compliance with the terms of the grant award. Such inspection, review and/or audit by representatives of the AGO may occur at any time, with or without notice to the Program.

**Computer Standards**

1. Each Program must have a functioning computer with internet access, word-processing, PDF, and spreadsheet capability.
2. The computer must have an Antivirus and a Firewall program(s) installed and updated regularly.
3. Each Program must have a valid email address for communications with the AGO.
  - a. NOTE: Email is not an acceptable form of mediation therefore mediation should not be conducted in this manner.

**Legal Representation:**

1. The AGO is unable to provide legal representation to volunteers and/or paid staff of Programs who are sued or subpoenaed with respect to mediations handled pursuant to these awards.

**Confidentiality/Conflict of Interest:**

1. Information the Program gains through its affiliation with the AGO is a record. Such information includes but is not limited to: internal memos, lists and discussions of pending investigations, as well as trends or cases being reviewed by the AGO.
2. Under no circumstances may any Program elicit or attempt to elicit any information from the consumer, other than that pertinent to the resolution of the consumer's complaint.
  - a. Note: Face-to-Face Mediation Programs must also comply with M.G.L. c. 233 § 23C (Work product of mediator confidential; confidential communications; exception; mediator defined)
3. Program staff/volunteers will not disclose any information related to or obtained in the course of mediation to any person other than the participant or the employees of the AGO, without the explicit authorization of the participants.
  - a. This authorization is given by the consumer upon signing the AGO complaint form, though it may be prudent to remind consumers of this prior to release of information.
4. Conflict of Interest: [M.G.L., Chapter 268A](#) (Conduct of Public Officials and Employees) may be applicable in some cases.

## Face-to-Face Mediation Program

### Face-to-Face Mediation Programs Minimum Standards of Performance:

1. Face to Face Mediation Programs (FTFMPs) must adhere to "The Uniform Rules on Dispute Resolution" as set forth by the Trial Court Standing Committee on Dispute Resolution.
2. FTFMPs may charge fees to parties for mediation according to the following provisions:
  - a. no party will be denied mediation due to an inability to pay;
  - b. the offer to waive the fee must be clearly disclosed to all parties when inquiring about the mediation service;
  - c. fees should not exceed the current small claims filing fee;
  - d. fees collected in this manner may not be comingled with the FTFMP account.
  - e. FTFMPs may not charge for a case referred from the AGO or a Local Consumer Program.
3. Mediation should be made available to disputants at times other than the standard hours of operation.

### Face-to-Face Mediation Process:

1. Once a referral is made, staff should contact the parties by phone or letter to provide an explanation of the face-to-face mediation process.
  - a. *A case should be counted as a "referral" if at least one party has actively contacted the program.*
2. An "Agreement to Participate" form must be signed, in accordance with [M.G.L. c. 233, § 23C](#) of the General Laws, by all parties before mediation.
3. All referrals should receive an I.D. # and be entered into a master log.
4. Terms of agreement should be clearly written on an agreement form; each party should receive a copy. One copy should remain in the case folder. Staff should follow-up on the settlement until all the terms are completed if possible. If no agreement is reached, the parties should be sent back to the referring agent or to small claims court.
5. At the end of each mediation, mediators and clients should fill out post mediation evaluation forms.
6. An agreement should be reported as upheld on the monthly report form if the majority of the term(s) are met.

7. A mediation case folder should contain:
  - a. an intake form;
  - b. a *signed* Agreement to Participate form;
  - c. a client contact sheet with dates/content of actions taken and intake notes;
  - d. post mediation evaluation forms;
  - e. a signed copy of the mediated agreement if in writing;
  - f. notes confirming that the agreement has been upheld and completed (if possible)
8. Complete case notes shall be kept in the case folder for each complaint. Personal opinions of the mediator or any staff shall not be recorded.

**Records and Retention:**

1. Please consult the Administrative Office of the Trial Court for clarification and further information.

**Reporting Requirements:**

2. ***All reports must be submitted electronically to [aaron.kravitz@state.ma.us](mailto:aaron.kravitz@state.ma.us).***
  - a) For the purposes of reporting, “referral” means an instance in which one of the parties involved in a potential mediation speaks or corresponds with a mediator or other FTFMP staff member about a specific potential mediation.
  - b) For the purposes of reporting “contact” means any passive outreach, such as mailings, general announcements about the availability of mediation, or advertising.

## Local Consumer Program

### Local Consumer Program Minimum Standards of Performance:

1. LCP shall not charge consumers a fee for any services rendered under a LCAF grant.
2. Any complaints that are sent to an LCP by the AGO in error should be returned to the AGO within a timely manner, with a note indicating the reason for the return.
3. The AGO may request to view a sample of the LCP complaint form used in order to verify that necessary information is obtained.
4. A consumer request for assistance must be in written form and is deemed a mediatable complaint if it is:
  - a. Between an individual and a for-profit business; and
  - b. The consumer is seeking specified relief – rescission of the contract, return of funds, etc.
5. An LCP will not mediate disputes:
  - a. between two private parties;
  - b. between two businesses;
  - c. where any previous court action has been taken (including but not limited to the initial filing of paperwork with the court);
  - d. in which the consumer is working with an attorney;
  - e. relating to a charitable organization's execution of its charitable mission (should be referred to the AGO Non-Profit/Public Charities Division); or
    - i. NOTE: A complaint may be mediated if the complaint pertains to a business transaction and does not relate to the performance of the organizations charitable purpose.
  - f. relating to a state agency (should be referred to the AGO, who will refer to agency or office with oversight of the state agency in question).

Many of these types of cases (with the exception of complaints against a state agency or against a charity) may be appropriate for Face to Face Mediation. In these instances, please contact the FTFMP in your area.

### Mediation Process:

1. If consumer initiates contact via email, response may be sent indicating that all future communications must be completed via telephone, in-person or mail.
2. Consumer complaints may be initiated in person via walk-in, through a written complaint or letter received by mail, e-complaint or by referral from the AGO hotline.
3. Complaints received directly at the LCP may be referred to another appropriate agency within a timely manner. The consumer shall be notified by telephone and in writing of



the referral and the reasons therefore. LCP will notify the AGO of such referral in their monthly header information.

4. Within five (5) business days of the receipt of any complaint (either from the AGO or made directly to the LCP), a LCP staff person or mediator shall make an initial contact with the consumer to assess the status of the complaint and confirm any information necessary prior to commencing mediation efforts on the case. The initial communication between mediator and consumer should identify the LCP, provide the mediator's contact information to the consumer, and explain the services to be provided and the procedures involved. The mediator may ask the consumer for additional information or documentation at this time, such as invoices, receipts, bills, or contracts.
5. If a consumer does not reply to the initial phone call and/or letter within ten business days, a 10 day letter may be sent to the consumer indicating that the complaint will be closed, and provide information on how to open the case in the future if the consumer so desires. The case may be marked as closed until further response from the consumer.
6. Under no circumstances shall an LCP contact the merchant in any way prior to contacting the consumer. Before contacting the merchant, mediators should carefully review the complaint. It is important to understand the complaint and the desired resolution prior to any attempt at mediation.
7. Within two (2) business days of a consumer indicating he or she would like to pursue mediation, an LCP staff person or volunteer must contact the merchant, explain the mediation process and make an initial determination about whether the merchant is interested in participating in mediation. The merchant may be provided with a copy of the complaint at this time if requested.
8. Mediation and resolution shall not be conducted solely through form letters.
9. Case notes should be kept in the case file for each complaint. Notes should include the date and content of each conversation, and/or steps taken. The file should also include copies of any letters received or mailed relevant to the case. **Case notes are subject to disclosure under the provisions of the Public Records Law. Personal opinions of the mediator or any staff should not be recorded.**
10. Upon closing the file, note the resolution with value, if any through the PIAC Header and Closer form and assign a value/estimated value when appropriate.

11. Referrals to Small Claims Court:

- a. Thirty day demand letters sent prior to filing a claim in Small Claims Court must be written by the consumers themselves and cannot be sent on the letterhead stationery of the LCP.
  - i. A sample letter is available on the AGO Website.
- b. If the consumer is requesting the assistance of a private attorney, the LCP may refer the Consumer to the Massachusetts Bar Association Lawyer Referral Service at (617) 542-9103/(800) 392-6164, the Boston Bar Association's Lawyer Referral Service at (617) 742-0625, or other local or county bar association referral services. Consumers should not be referred to individual attorneys.

**Public Records Requests/Records Retention:**

Maintenance and release of records made pursuant to this grant award will be done in compliance with the provisions of the Massachusetts Public Records Law and Massachusetts Statewide Record Retention schedules.

By accepting grant funds, each LCP agrees to cooperate with the Attorney General's Office to comply with records retention and public records requests.

1. A record is defined as any document, whether in electronic or paper format, including complaints, correspondence, emails, memos and any notes that are included in or related to a case file.
2. Records Retention: All complaints files shall be retained and accessible for ten years. Requests to shred or otherwise destroy files older than 10 years must be made in writing (email is acceptable) to the AGO for submission to the Records Conservation Board for destruction permission. Records may not be shredded or otherwise destroyed until the AGO confirms in writing that such permission has been granted.
  - a. Note: Records containing personal information such as social security or credit card numbers must be destroyed by shredding in accordance with [M.G.L. c. 93I, § 2](#).
3. Requests for the Number of Complaints Filed Against a Business: If asked for the number of complaints filed against a particular business refer the caller to the AGO Hotline.
4. Public Records Requests made directly to the LCP: The Public Records Law requires a response to oral as well as written requests. These requests will be reviewed and responded to by the AGO in compliance with the Public Records Law.
  - a. Oral Requests: Each program may ask that all requests be put in writing for the purpose of clarity and directed to the Office of the Attorney General, Public Inquiry and Assistance Center. If the person making the request declines to do so in writing, forward the following information to PIAC immediately:

- i. Date of Request
    - ii. Requestor information – mailing address, email address, phone number, etc.
    - iii. Language used by requestor
    - iv. Types of Documents Requested, i.e. complaints only or any additional records.
  - b. Written Requests for Records: Written requests for records or other information received by or relative to any of the LCP's work as it pertains to consumer assistance must be forwarded to Didi LaRochelle at (617) 727-3265 (fax). These written requests will be reviewed and responded to by the AGO in compliance with the Public Records Law.
5. Public Records Requests directly made to PIAC: The AGO will contact LCPs for information. LCPs must provide the information requested by the AGO in the course of a Public Records Request.
6. Under the Massachusetts Public Records Law, requests for inspection or copying of records must be responded to. Regardless of whether the request is made to the LCP or to the AGO, the AGO must respond within ten (10) calendar days within the initial receipt of the request.

#### **Reporting Requirements:**

1. ***All reports must be submitted electronically to***
  - a. Quarterly Reports - [aaron.kravitz@state.ma.us](mailto:aaron.kravitz@state.ma.us).
  - b. Headers and Closers – [Melissa.armstrong@state.ma.us](mailto:Melissa.armstrong@state.ma.us).
2. **Header and Closer Reporting**: Within seven (7) calendar days of the last day of each month, LCPs must report the cases opened and closed. Monthly reporting should use the supplied forms and be submitted electronically. LCPs may decide to report this information on a more frequent basis such as every week or every other week.
  - a. **"Header"** information must include:
    - i. If case is referred from PIAC, the PIAC Intake #
    - ii. Date Opened at the LCP
    - iii. Complete only if PIAC information is different
      1. Consumer name, mailing address, and phone number
      2. Business name, mailing address and phone number
      3. Business and complaint codes
    - iv. A brief, 2-3 sentence explanation of the complaint.
  - b. **"Closer"** information must include:
    - i. If case is referred from PIAC, the PIAC Intake #
    - ii. Complete only if PIAC information is different
      1. Consumer name, mailing address, and phone number
      2. Business name, mailing address and phone number

- 3. Case disposition/resolution using PIAC Mediation Disposition Codes
- iii. Case disposition/resolution using PIAC Mediation Disposition Codes
- iv. Brief 2-3 sentence description of resolution.